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| 23 April 2020 |

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| Response form for the Joint Consultation Paper concerning ESG disclosures |
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| Date: 23 April 2020ESMA 34-45-904 |

Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter “SFDR”) and in particular on the specific questions summarised in Section 3 of the consultation paper under “Questions to stakeholders”.

Comments are most helpful if they:

1. contain a clear rationale; and
2. describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESA\_QUESTION\_ESG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESA\_ESG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA\_ESG\_ABCD\_RESPONSEFORM.
5. The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 1 September 2020.
6. Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[[1]](#footnote-2). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Advisory Committee of the Spanish National Securities Market Commission (CNMV) |
| Activity | Government, Regulatory and Enforcement |
| Are you representing an association? |[x]
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

The Advisory Committee of the CNMV (Spanish National Securities Market Commission) has been established by the Spanish Securities Market Act as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc.) and its opinions are independent from those of the CNMV.

The publication of these RTSs for the development and harmonization of ESG disclosure, as a part of sustainable finances plan within the European Union is very welcome. Likewise the strategic importance of sustainable financing and the role played on it by the various economic actors and stakeholders is fully recognized. **The financial sector is fully aware of the strategic importance of the ESG action plan and wants to be a driving force behind it.**

In that context, the goal of assessing the impact of investment in sustainable factors and making it transparent is shared. However, **the lack of common definitions, methodologies and guidelines on how to reflect the impact of investment on sustainability factors, in the current regulatory context, makes it difficult to examine and evaluate these factors and therefore to disclose them.**

The following highlights a number of areas for improvement in sustainable financing regulations and, in particular, the draft RTS subject to this public consultation:

1. **Highly demanding timetable**

According to the SFDR, ESAs shall submit draft RTS to specify the content, methodologies and reporting set out in Articles 2, 4, 8, 9, 10 and 11 of the SFDR, **before 30 December 2020.**

Given that most of the information obligations set forth in the SFDR will be applicable as of March 10, 2021, the 3-month implementation period granted to the entities to adapt to these new disclosure requirements is considered insufficient.

If, in addition, the communication from the President of the ESAs to the European Commission is considered, this circumstance should be taken into account and the date of application of these obligations should be deferred in order to facilitate a phased adaptation within reasonable deadlines[[2]](#footnote-3).

Given the strategic importance and objectives of the ESG Plan, a reasonable implementation schedule with previously approved definitions, methodologies and guidelines is more than justified.

1. **Difficulty in obtaining the required information**

At present, data related to ESG factors are not easily accessible, which will mean that, in most cases, Entities will have to resort to external providers in order to comply with the disclosure obligations proposed in the draft STR, which is not the desirable situation.

The need to "buy" data from external providers may result in competitive disadvantages favouring the biggest players, which would not comply with the principle of proportionality. In any case, the high data requirement that implies the use of adverse impact indicators and their reporting could lead to problems of availability and coverage of data on non-EU companies (the Non-Financial Reporting Directive (NFRD), obliges only EU companies).

Also, many of the indicators to which STRs refer do not have a single form of measurement. In fact, according to a recent survey[[3]](#footnote-4) on non financial information of IBEX-35 companies, 98 per cent of quantitative indicators have more than one way of being measured and some, such as energy consumption (indicators 5-8 in Table 1) or gender pay gap (indicator 18 in Table 1) have, in practice, up to 10 and 9 different metrics, respectively.

Although Non-Financial Reporting Directive (NFRD) is being revised to extend the scope of companies that must provide information, it is likely that at least two or three years will pass before reliable and comparable company data are available. Until that time, much of the data from external suppliers will be based on estimates and therefore have limited reliability.

A proposal has recently emerged from different European financial federations for the creation of a centralized European register of ESG data, in order to be able to comply, among other regulatory developments, with the provisions of the SFDR. Such a register, in addition to presenting more harmonized and comparable information, would be very much welcome as it would facilitate access and minimize the cost of implementation for financial market participants.

1. **Coherence with other standards**

There is a need to ensure convergence between sustainability disclosure obligations arising from different regulatory developments. This convergence would certainly help all users of this information (be they investors, institutions, credit rating agencies, consumers, academics or any other stakeholders) to better understand it. Likewise, from a pure data point of view, it would be more efficient and effective to use the same indicators, regardless of the standard from which they come.

Therefore, inconsistencies with the following standards are observed:

* **Taxonomy:** It would be logical to first have a Taxonomy, not only environmental but also social, to make the entire regulatory framework more consistent, avoiding the need for entities to make critical changes to their systems and processes to comply with the requirements of the SFDR and a few months later with the Taxonomy Regulation, which would mean duplicating efforts in a very short time.

It is also essential to clarify how the *"Do not significantly harm"* (DNSH) principle in the Taxonomy regulations, which appears to apply to sustainable products, interacts with the same DNSH principle under the RTS of SFDR that applies to entities.

* **UCITS and AIFMD Level 2 Regulations** [[4]](#footnote-5)**:** It does not seem logical that most of the reporting requirements set out in the SFDR on how UCITS and AIF Managers are complying with the integration of risks and sustainability factors in their organizations are applicable from 10 March 2021 (and 30 June 2021 for major adverse impacts), when such obligations on which UCITS and AIFM have to report are set out in an amendment to the UCITS and AIFM Level 2 implementing regulations which is not expected to come into force until the last quarter of 2021.
* **MiFID II Level 2 Regulations** [[5]](#footnote-6)**:** The same comment made in the previous paragraph with respect to the UCITS and AIF managers is applicable to financial advisors subject to MiFID II and IDD regulations. Furthermore, in both cases, with the aggravating circumstance that, since the amendments to the MiFID II and IDD implementing regulations on product governance and suitability (planned for the last quarter of 2021) would not have been approved, ESG preferences of the client would not be recorded and available in March 2021, so it does not seem reasonable that regular reporting should be made on how the financial product is achieving client objectives (ESG), when these objectives are not yet known.

It is also essential to clarify what implications the new definition has on the product promoting E and/or S [[6]](#footnote-7) that the EC has included in the draft amendment to the MIFID II Level 2 implementing regulation, and which is different from the interpretation (since there was no definition of this product in the standard) that could be drawn so far from the SFDR regulation.

* **NFRD and SFDR Level 1:** It seems that the draft STR is not consistent with other European reporting standards such as the NFRD Directive, nor with SFDR Level 1, since it does not sufficiently recognize neiher the principle of "materiality" not the principle of "proportionality". RTS seem to focus on a YES/NO assessment, with quantitative rather than qualitative indicators.
1. **Complexity in the interpretation of the rules**

In many aspects, the wording of the draft RTS is complex and subject to multiple interpretations. From reading the text, very relevant doubts arise, such as: the categorization of a financial product under article 8 or under article 9, how the process of valuation or screening of adverse impact indicators should be carried out, or what interrelationship there is between the main adverse impacts and the DNSH principle.

In this sense, the ESAs themselves, in the document under consultation[[7]](#footnote-8) highlight the need to define terms that are crucial for the implementation of Level I of SFDR, which are however not defined in this Regulation (expressly mentioning the terms "promotion of environmental or social characteristics" or "monitoring of good governance practices"), and then declare themselves not competent to define at Level 2 what is not defined at Level 1, and therefore prefer to limit themselves to "giving references in the recitals of the RTS".

This preference is legitimate and understandable, but it has the damaging effect of creating tremendous legal uncertainty, by leaving the addressees of the regulation without definitions of concepts that are considered key by the authorities responsible for their supervision.

Along the same lines, in question 16 of the Public Consultation, the ESAs themselves ask whether the differences between the products of article 8 and article 9 of SFDR are sufficiently well identified in the draft RTS, when said draft only includes information requirements for each of these products, without there being a clear definition of both categories in all the regulations that would allow them to be clearly differentiated.

1. **Doubts about the utility for the final investor**

The completeness of the data required and the nature of such data seems to raise doubts as to whether such information will be understandable and useful to the end-investor. Most investors may feel overwhelmed by the amount of detailed information they would receive or may not see directly the benefits or sense of this information overload.

Moreover, as far as indicators are concerned, it is observed that the measurement is made from different angles depending on the specific indicator, which makes understanding very difficult. By way of example:

* In indicator 1 of Table 1 (carbon emissions) the measurement is made from the investor's perspective, calculating the part of emissions made by the invested companies that the investor would "own", taking into account the percentage of equity held in those companies.
* In indicator 1 of Table 3 (number/rate of accidents, injuries, fatalities and frequency), the measurement is made from the perspective of the invested company, that is, a mere aggregation of the number or rate of accidents of the invested companies is requested, which generates as a result a figure or percentage of little informative value.

The result will be a long, heterogeneous and disjointed information, with very diverse metrics and perspectives, difficult for investors to understand, outcome which contrasts with the goal of the entire regulatory framework that is designed to assist the end investor in making investment decisions through the provision of relevant, understandable and consistent information.

<ESA\_COMMENT\_ESG\_1>

* : Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an “opt-in” regime for disclosure??

<ESA\_QUESTION\_ESG\_1>

No. We value very highly the work done by ESAs in identifying indicators, and we recognize their usefulness. However, the mandatory reporting of all of them, in particular the 32 indicated in Table 1, whatever their value, should be reviewed.

In fact, we believe that only major adverse impacts should be reported, and this should only be asserted when the indicator's metric reaches a certain relevance, in the opinion of the reporting entity. Only in this way can the principles of materiality and proportionality be applied. Although we are aware that this approach makes comparability more difficult, as it leaves the consideration of what should be understood as principal to the entity's judgement, this is a natural consequence derived from the complexity of this ambitious and important regulatory package, which will be further overcome as its implementation and application mature.

<ESA\_QUESTION\_ESG\_1>

* : Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?

<ESA\_QUESTION\_ESG\_2>

No. As indicated in the answer to the previous question, according to the proposal of the ESAs, any positive value for any indicator included in Table 1,2 or 3 would automatically lead to a principal adverse impact, which distorts and does not comply with the principle of materiality that the SFDR Level 1 regulations state with absolute clarity by referring only to "principal” adverse impacts.

<ESA\_QUESTION\_ESG\_2>

* : If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?

<ESA\_QUESTION\_ESG\_3>

Yes. We believe that one option that would facilitate compliance by entities with their reporting obligations while allowing them to take advantage of the enormous usefulness of the indicators developed by the ESAS would be to apply the same "opt-in" approach already envisaged for the indicators in Tables 2 and 3, so that on the basis of the 32 indicators proposed in the Joint Paper by the ESAs, each entity can choose those on which it reports, always maintaining the principle that those it chooses should have continuity over time, unless there are good reasons for their exclusion or modification.

<ESA\_QUESTION\_ESG\_3>

* : Do you have any views on the reporting template provided in Table 1 of Annex I?

<ESA\_QUESTION\_ESG\_4>

In order to facilitate comparability and make it easier for investors to make decisions, we see utility in the template, although we understand that the appropriate approach for starting this regulation should be the "opt-in" approach proposed in the answer to question 3.

<ESA\_QUESTION\_ESG\_4>

* : Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies´ GHG emissions)?

<ESA\_QUESTION\_ESG\_5>

We agree with most of the indicators, although we consider that their use should be done according to the opt-in approach mentioned above, which would also sometimes rule out the use of some indicators that may not be relevant, may not offer the appropriate guarantees and/or may lead to undesired results.

In this regard we consider that:

* The indicators cannot be applied to all companies in the same way as proposed by the draft RTS. For example, the absence of a certain policy may not automatically translate into an adverse impact. There are many factors (among them, the regulatory framework itself or the strength of the judicial system of the country where the invested company has its headquarters) that will condition whether a certain indicator will be relevant or not, what seems obvious is that not all companies can be measured in the same way.
* Some indicators are designed in such a way that they can produce a detrimental result that differs from the desired one.

For example, indicator 13 in Table 1 (Exposure to areas of high water stress), which is mandatory, can discourage investment in certain geographical regions (without distinguishing productive activity), when the optimum would be that these regions, if due to their environmental or economic circumstances cannot improve their water management, could redirect their productive activity towards activities that are not intensive in water consumption. However, the indicator, as proposed, is of obligatory supply and is limited to quantifying the investment in companies with locations in areas of high water stress, without taking into account the kind or sector of activity that these companies carry out and their relationship with water consumption.

In addition, and following with this particular example, for the purposes of information on this indicator, Annex 1, section 1, paragraph p) of the RTS defines "area of high water stress" as "'regions where the percentage of total water withdrawn is high (60%) or extremely high (80%) in the World Resources Institute's (WRI) Water Risk Atlas tool "Aqueduct", thus giving a worrying regulatory character to the definition provided by an external private organization.

This example highlights in our opinion, the need to include the “opt-in” approach explained in previous questions.

<ESA\_QUESTION\_ESG\_5>

* : In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?

<ESA\_QUESTION\_ESG\_6>

Not at this first stage, unless the “opt-in” approach proposed in previous answers is adopted, and said indicators, if available and relevant according to the market participant opinion, may be provided in a voluntary basis

<ESA\_QUESTION\_ESG\_6>

* : The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?

<ESA\_QUESTION\_ESG\_7>

Yes, provided the “opt-in” approach proposed in previous answers is adopted, and said indicators with two metrics (1. the share of the investments in companies without a particular issue required by the indicator and 2. the share of all companies in the investments without that issue), if available and relevant according to the market participant opinion, may be provided in a voluntary basis.

<ESA\_QUESTION\_ESG\_7>

* : **Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?**

<ESA\_QUESTION\_ESG\_8>

No, the Committee considers that, based on the challenging timeline, the volume of information already required and the difficulties in obtaining it, no additional indicators should be included, but if so, it should but in a voluntary basis and according to the “opt-in” approach explained in previous questions.

<ESA\_QUESTION\_ESG\_8>

* : Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?

<ESA\_QUESTION\_ESG\_9>

With a different calendar, these indicators would be very much welcome. But the fact is that compliance timeline is extremely short, while data on investee companies is largely unavailable. Under these complex circumstances, provision of information on these matters should be delayed, in order to align the timelines of ESAs (to provide relevant indicators), of investee companies (to publish the information to calculate said indicators) and of market participants (to calculate and report the value of these indicators.

<ESA\_QUESTION\_ESG\_9>

* : Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?

<ESA\_QUESTION\_ESG\_10>

The draft RTS require presenting a historical comparison of the principal adverse impact indicators up to a maximum of 10 years. It should be noted that this provision goes beyond the content of the SFDR Level 1 text, which makes no reference to providing a historical comparison.

Furthermore, this Committee considers that certain historical figures do not provide any useful information to investors on the actual impact of investments. For example, if the carbon footprint of investments decreases but assets under management increase, the reported impact will increase year after year.

If the historical comparison is to be maintained, a reasonable period to consider would be 3 to 5 years and would better reflect the sustainability of invested companies, especially companies in transition. <ESA\_QUESTION\_ESG\_10>

* : Are there any ways to discourage potential “window dressing” techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?

<ESA\_QUESTION\_ESG\_11>

As explained in previous answers, we believe that the approach proposed by ESAs is already overly prescriptive and is not likely to result in meaningful and useful disclosures to end-investors. We’d strongly support a more flexible approach.

<ESA\_QUESTION\_ESG\_11>

* : Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?

<ESA\_QUESTION\_ESG\_12>

We acknowledge the usefulness of the templates, both in order to facilitate comparability and to allow a better understanding by the recipients of the expected outcome, although we believe that the most appropriate approach should be that of their voluntary employment, at least in this first stage.

<ESA\_QUESTION\_ESG\_12>

* : If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?

<ESA\_QUESTION\_ESG\_13>

In our opinion, the content of the templates can hardly be described in this answer. Given the objective of facilitating the investor's understanding of the investment in terms of ESG considerations, before its realization and during its maintenance, we consider that the content of the templates should be the result of an exhaustive analysis, based on a draft template on which the opinion of the recipients of the information and of the market participants is collected.

<ESA\_QUESTION\_ESG\_13>

* : If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.

<ESA\_QUESTION\_ESG\_14>

N/A

<ESA\_QUESTION\_ESG\_14>

* : Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?

<ESA\_QUESTION\_ESG\_15>

We consider that the amount of information required is excessive and goes beyond what is required at level 1. Said that, if this approach is to be maintained, the Committee prefers that the overload of information affects to the website information rather than to the pre-contractual information.

<ESA\_QUESTION\_ESG\_15>

* : Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.

<ESA\_QUESTION\_ESG\_16>

Differences between Article 8 and Article 9 products are not clear from a conceptual point of view and, as consequence, not being clear the definitions, hardly could be clear the information to provide about them. In this sense, univocal definitions and full alignment among regulations are essential

<ESA\_QUESTION\_ESG\_16>

* : Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?

<ESA\_QUESTION\_ESG\_17>

This question cannot be assessed at this stage, due to the difficulty to clearly capture and distinguish direct investments, as stated in the answer to the next question.

<ESA\_QUESTION\_ESG\_17>

* : The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?

<ESA\_QUESTION\_ESG\_18>

At this time, the main concern is not whether graphical representations foreseen in Article 15(2) can be extrapolated to all kind of Article 8 products, but whether it is possible to clearly differentiate the investments of Article 15.2(i) (“the total investments that are sustainable investments and, where relevant, the subdivision of those sustainable investment between environmental or social objectives”) from those of Article 15.2(ii) (“the total investments other than those in point (i) that contributes to the attainment of the environmental or social characteristics promoted by the financial product and, where relevant, the subdivision of those investments between environmental or social characteristics”). Further clarifications on this differentiation would be very much welcome.

<ESA\_QUESTION\_ESG\_18>

* : Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?

<ESA\_QUESTION\_ESG\_19>

This Committee is not in favour of the mandatory distinction of specific sectors.

<ESA\_QUESTION\_ESG\_19>

* : Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?

<ESA\_QUESTION\_ESG\_20>

For the reasons explained in answer to question 17, this question cannot be assessed at this stage.

<ESA\_QUESTION\_ESG\_20>

* : While Article 8 SFDR suggests investee companies should have “good governance practices”, Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including “sound management structures, employee relations, remuneration of staff and tax compliance”. Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?

<ESA\_QUESTION\_ESG\_21>

The Committee considers that, based on the challenging timeline, the volume of information required and the difficulties in obtaining it, the RTS should adhere to the provisions of the SFDR, avoiding the incorporation of any other information whose supply is not clearly contemplated in level 1.

<ESA\_QUESTION\_ESG\_21>

* : What are your views on the preliminary proposals on “do not significantly harm” principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?

<ESA\_QUESTION\_ESG\_22>

The draft RTS detail the presentation and content of the information in relation to the principle of ‘do not significantly harm’ as set out in Article 2(17) of the SFDR, that should be consistent with the content, methodologies, and presentation of indicators in relation to adverse impacts referred to in Article 4(6) and (7) SFDR. Notwithstanding, we regret that the differences between the two concepts are not clear, which leaves room for different interpretations, to the detriment of the comparability of the information and its understanding by its recipients.

<ESA\_QUESTION\_ESG\_22>

* : Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?

<ESA\_QUESTION\_ESG\_23>

The draft RTS require information on the investment strategies used, based on categories or definitions that the ESAs themselves propose to undertake on the basis of the investment strategies generally used for sustainable investment (such as "best in class", exclusion, etc.). The Committee welcomes this initiative and believes that such categorisation would be useful on the basis of international standards and the voluntary nature of their use. Any other measure, beyond what is indicated, could lead to market fragmentation, as well as complicating the information to be provided.

<ESA\_QUESTION\_ESG\_23>

* : Do you agree with the approach on the disclosure of financial products’ top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?

<ESA\_QUESTION\_ESG\_24>

The draft RTS require reporting of the top 25 investments in the portfolio, which seems excessive. The Committee considers that reporting on the top 10 investments would be more than sufficient to give visibility to the portfolio, especially as some of them will be highly concentrated.

<ESA\_QUESTION\_ESG\_24>

* : For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.
1. an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);
2. a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);
3. a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and
4. a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.

<ESA\_QUESTION\_ESG\_25>

Considering that the four elements mentioned are not the core of ESG information, the best option is the provision of this information on the website, in order to keep pre-contractual disclosures as brief as possible.

With respect to the fourth item (a reference to whether data sources are external or internal and in what proportions), we consider that this information does not add value to the final investor. There are many sources of information that could be used, most of which are neither uniform nor comparable. Disclosure of such information could mislead the end-investor, so we suggest to keep said information as concise, clear and easy to understand as possible.

<ESA\_QUESTION\_ESG\_25>

* : Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?

<ESA\_QUESTION\_ESG\_26>

In our opinion, and for the sake of clarity, it is better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as it is already foreseen in the draft RTS under Article 19 and Article 28

<ESA\_QUESTION\_ESG\_26>

* : Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

<ESA\_QUESTION\_ESG\_27>

The ESAs document estimates the cost of integrating ESG considerations into the activities of financial institutions in the range of 80,000-200,000 euros. It is very difficult to assess these costs, as at present, data related to ESG factors are not easily accessible, and therefore compliance with these obligations extremely relies on external data, with a cost which is frequently opaque.

Despite the principle of proportionality, the need to "buy" data from external providers may result in competitive disadvantages favouring the biggest players, to the detriment of the small and medium ones (please note that, for example in the sector of asset management, there are more than 4.500 Management Companies in the EU, most of them small or medium).

For this reason, we see merit in a proposal that has recently emerged from different European financial federations for the creation of a centralized European register of ESG data, in order to be able to comply, among other regulatory developments, with the provisions of the SFDR. Such a register, in addition to presenting more harmonized and comparable information, would be very much welcome as it would facilitate access and minimize the cost of implementation for financial market participants.

<ESA\_QUESTION\_ESG\_27>

1. Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39. [↑](#footnote-ref-2)
2. In this respect, **the letter dated 20 April 2020 addressed by Jose Manuel Campa, President of the ESAs Joint Committee**, to John Barrigan, Director General of the Financial Stability, Financial Services and Single Capital Market Area, is extremely relevant, acknowledging the very tight deadlines for the application of the Disclosure rules and **asking the EC to reconsider the entry into force of the rules in March 2021**, allowing the Entities sufficient time to duly implement them. [↑](#footnote-ref-3)
3. Rethinking Sustainability - Comparative survey of IBEX 35 Non-Financial Information Statements for 2018, conducted by EY. [↑](#footnote-ref-4)
4. The European Commission has published the draft of the Delegated Acts for the integration of sustainability factors under the UCITS, AIFMD, MiFID II and IDD regulations, which it has submitted to public consultation for 4 weeks ("Better Regulation") until 6 July 2020 and whose approval is not expected until the last quarter of 2020, which, taking into account the 12-month period foreseen in the regulations for the application of this new regulation, would mean its entry into force no earlier than the last quarter of 2021.

 [↑](#footnote-ref-5)
5. See note 15 [↑](#footnote-ref-6)
6. See note 9

 [↑](#footnote-ref-7)
7. Paragraph 6, page 11 [↑](#footnote-ref-8)